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MASSACHUSETTS
LABOR RELATIONS
COMMISSION



FISCAL YEAR 1994
ANNUAL REPORT

COMMONWEALTH OF MASSACHUSETTS
LABOR RELATIONS COMMISSION
FISCAL YEAR 1994 ANNUAL REPORT

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William J. Dalton, Chairman
William G. Hayward, Commissioner
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COMMONWEALTH OF MASSACHUSETTS

LABOR RELATIONS COMMISSION

ANNUAL REPORT FISCAL YEAR 1994

I. INTRODUCTION

STATEMENT OF THE COMMISSION'S RESPONSIBILITIES

The Labor Relations Commission is a quasi-judicial agency whose purpose is to ensure the prompt, peaceful, and fair resolution of labor disputes by enforcing the labor relations laws of the Commonwealth. As the state counterpart to the National Labor Relations Board, the Commission administers the Public Employee Bargaining Law and the Private Sector Collective Bargaining Law, General Laws Chapter 150E and 150A respectively. These laws give employees of state and local government, and employees of private businesses which do not come within the jurisdiction of the NLRB the right and protection:

- to form, join, or participate in a union or association;
- to bargain collectively over terms and conditions of employment such as wages, hours and benefits;
- to engage in other concerted activity for mutual aid and protection; and
- to refrain from participating in any of these activities.

The Commission has existed since 1937, and its jurisdiction has been expanded frequently. The legislature has granted full collective bargaining rights to state, county and municipal employees in the executive and judicial branches of government. Approximately 98% of the Commission's caseload deals with labor matters affecting public employees and 2% of the caseload concerns the employees of private

employers. By guaranteeing to employees the right to choose freely whether or not to be represented by a union and by impartially adjudicating claims between employees, employers and unions, the Commission ensures that labor and management live within the strictures of the state's collective bargaining laws. Through its case resolution techniques the Commission establishes labor relations policy for public employees throughout Massachusetts.

Pursuant to its responsibility to ensure the timely, peaceful, and fair resolution of labor disputes, the Commission performs the following primary functions:

1. **Disposition of Unfair Labor Practice Charges**

The Commission adjudicates charges of unfair labor practices as defined by the Laws. For example, charges may be filed by either a union or an employer alleging that the opposing party has not bargained in good faith. A charge may be filed by an individual against an employer claiming that the employer has discriminated against her or him because of her or his union activity. Charges may also stem from allegations by individuals that their union has not represented them fairly.

Whenever an employee, union, or employer files a charge with the Commission claiming that either an employer or union has committed an unfair labor practice, the Commission investigates the charge and after reviewing the facts alleged and legal arguments of the parties, determines whether it has "probable cause" to issue a complaint and conduct a hearing. If the charge is dismissed without a hearing, the charging party may request reconsideration of the matter by the Commission. If the Commission affirms the dismissal, the charging party may seek judicial review in the Appeals Court.

If the Commission determines that probable cause exists to believe that the law has been violated, a complaint is issued and a public hearing is conducted by an administrative law judge. At the hearing, the parties may be represented by counsel, witnesses are sworn and evidence is taken. Following the hearing, each side has the opportunity either to file briefs or to offer closing arguments.

The administrative law judge may issue either a decision or recommended findings of fact. Either may be reviewed by the full Commission. Final Commission decisions may be appealed to the Massachusetts Appeals Court.

All administrative law judge and final Commission decisions are written and are periodically published for the benefit of the public and the labor community in the Massachusetts Labor Cases, a private reporter service. The Commission's decisions are also available by CD ROM subscription through the Social Law Library. Excerpts of the decisions are also published in Mass. Lawyer's Weekly, National Public Employment Reporter, Government Employee Relations Report, Labor Relations Reporter, and Public Employee Bargaining. The Commission's decisions guide the conduct of collective bargaining and the relationship between labor and management throughout the Commonwealth.

2. Conduct of Representation Elections and Bargaining Unit Determination

The Commission conducts secret ballot elections so that employees may choose whether to be represented by a union. Elections are conducted whenever (1) one or more employee organizations claim to represent a substantial number of employees in an appropriate unit; (2) an employee organization petitions the Commission alleging that a substantial number of employees wish to be represented by the petitioner; or (3) a substantial number of employees in a bargaining unit allege that the exclusive representative no longer represents a majority of the employees. Elections may be conducted "on site" or by mail ballot procedures depending on the size of the unit and the relative cost of each type of election.

By law, the Commission also must determine what bargaining unit is "appropriate" for collective bargaining. The agency must consider the "community of interest" that exists between different classifications of employees, the efficiency of the employer's operations, and the interests of employees in "effective" representation. The Commission assists the parties to reach agreement concerning an appropriate unit. When no

agreement is possible, however, the Commission holds a hearing and issues a written decision.

3. Prevention and Termination of Strikes

Strikes by the employees of most public employers are illegal under General Laws Chapter 150E. When a public employer believes that a strike has occurred or is imminent, the employer may file a petition with the Commission for an investigation. The Commission quickly investigates and decides whether an unlawful strike is occurring or about to occur. If unlawful strike activity is found, the Commission directs striking employees back to work and issues other orders designed to help the parties resolve the underlying dispute. Most strikes end after issuance of the Commission's order, but judicial enforcement of the order sometimes necessitates Superior Court litigation which can result in court-imposed sanctions against strikers.

4. Agency Service Fee Determinations

Chapter 150E allows public employers to enter into collective bargaining agreements which require non-union employees covered by the agreement to pay an agency service fee to the union, "commensurate with the cost of collective bargaining and contract administration," as a condition of continued employment. Employees may challenge the amount of the annual agency service fee by filing an "amount" charge with the Commission. Such charges require a detailed evaluation of the union's expenses. Employees also may challenge a union's legal right to collect a fee by filing a validity charge with the Commission. Hundreds of charges are filed each year raising questions of constitutional rights, auditing and accounting practices as well as some labor policy issues. The Commission's rulings have set precedent in this emerging area of the law.

5. Court Litigation

Parties to final decisions issued by the Commission may appeal the decision directly to the Massachusetts Appeals Court. For this reason the Commission functions as a trial level court for labor relations cases. Further appellate review may be sought before the Massachusetts Supreme Judicial Court. In addition, the Commission may bring suit in the Appeals Court to enforce compliance with final decisions of the Agency. Although the Appeals Court has original jurisdiction over Commission final orders, the Supreme Judicial Court often takes cases directly on appeal either at the request of a party or on its own motion. The Commission also occasionally must seek judicial enforcement in Superior Court of orders directing public employees to cease engaging in illegal strike activities. Commission staff attorneys represent the Commission and conduct all of the agency's litigation.

6. Other Responsibilities

The Commission processes unit clarification petitions and requests for binding arbitration. Clarification petitions may be filed by an employee organization or an employer for the purpose of clarifying or amending a recognized or certified bargaining unit.

Massachusetts law specifies that a party to a collective bargaining agreement that does not contain a grievance procedure culminating in final and binding arbitration, may petition the Commission to order grievance arbitration. These "Requests For Binding Arbitration" are processed quickly by the Commission to assist the parties to resolve their grievances.

Sections 13 and 14 of Chapter 150E require the Labor Relations Commission to maintain a list of employee organizations and the bargaining units they represent. Section 7 of Chapter 150E requires public employers to file copies of all collective bargaining agreements with the Commission. The Commission requires labor organizations to provide the following information: the name and address of current officers, address where notices can be sent, date of organization, date of

certification, and expiration date of signed agreements. Each organization must also file an annual report with the Commission containing: "the aims and objectives of such organization, the scale of dues, initiation fees, fines and assessments to be charged to the members, and the annual salaries to be paid officers." Budget constraints preclude institution of a "tickler" system to remind labor organizations of their filing obligations. Instead, the Commission relies upon various internal case-processing incentives to encourage compliance with the filing requirements.

7. Caseload summary

As case statistics indicate, the Commission primarily serves the public sector population including individual employees, unions, and employers.

During fiscal year 1994, 830 cases were filed with the Labor Relations Commission and 872 were closed. Of these, 811, or 97.7%, were filed pursuant to the agency's public sector collective bargaining jurisdiction under General Laws Chapter 150E. The remaining 19 cases involved the Commission's authority under General Laws Chapter 150A.

8. Agency Priorities

The Commission's highest priority is to enforce the state's collective bargaining laws and to promote productive labor relations by resolving cases filed with the Commission as quickly as possible. Time required to resolve a case varies depending upon the nature of the legal claims, the resources of the parties and the resources of the Commission. Each charge requires docketing and clerical time; investigation and deliberation time; preparation of a complaint or dismissal order; and, when the charges are deemed sufficiently meritorious, a hearing with detailed factual findings and a legal decision, followed by time for appeals. Constitutional principles of due process dictate each step in the procedure, but the Commission has implemented techniques designed to reduce the agency personnel time required to perform each step.

Beginning July 1, 1993, the Commission instituted a mandatory written procedure policy for unfair labor practice cases. This policy, which requires the parties to submit detailed documentation to the Commission, replaces time consuming, in-person investigation procedures and has resulted in a faster processing of cases. During FY 1994, the Commission implemented additional internal procedures intended to emphasize case settlement as a means to improve productivity by resolving cases without time consuming trials. Beginning July 1, 1994, the Commission instituted a case evaluation program designed to give the parties to selected unfair labor practice cases an opportunity for early evaluation of their cases in the hope that if the parties receive an impartial appraisal of their legal position then they will be more likely to settle the matter.

The changes instituted at the Commission have resulted in substantial improvement in the time it takes for the Commission to determine "probable cause" and hold hearings on cases. Formerly, it took six to eight months for a case to reach the Commissioners for a probable cause determination; it now takes less than three months from the time pleadings are filed. Formerly, the time span between the time a complaint was issued by the Commission to the time of hearing was six to eight months; it is now less than four months. At the end of FY 1992, the average length of time that a case was open at the Commission was 62.7 weeks. By the end of FY 1993 that average had been reduced to 51.83 weeks, and, at the end of FY 1994, this number had been further reduced to 43.89 weeks. This is an improvement of over 30% in two years.

Simultaneously the Commission is committed to quality. By delivering clear legal opinions that provide guidance to the labor-management community, the Commission attempts not only to resolve the specific legal controversy that is the subject of the decision, but also to establish clear legal precedent that will guide other parties in the conduct of their labor relations.

II. STRUCTURE OF THE COMMISSION

The Commission consists of three members who are appointed by the Governor for staggered five-year terms. One Commissioner is designated as chairperson. Any member of the Commission may be removed by the governor, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause. The Commission has the authority to make, amend and rescind such rules and regulations as may be necessary to carry out the provisions of the law. The Commissioners manage the Commission, hear and decide cases pending before the agency, authorize all litigation, and manage all personnel. For administrative purposes, the Commission is within, but not subject to the jurisdiction of, the Executive Office of Labor.

The Executive Secretary directs and supervises certain employees of the Commission. He assists the Commissioners in budgetary and other administrative matters, informs the Commission of the status of all matters pending before it, and maintains a permanent record of the disposition of cases. The Assistant to the Executive Secretary supervises all case scheduling at the Commission.

The Chief Counsel directs and supervises the legal staff in their duties of investigating cases, conducting hearings, and writing decisions. He also serves as the Commissioners' principal legal advisor. The Deputy Chief Counsel supervises the legal staff with respect to all litigation before the courts of the Commonwealth.

The administrative law judges, designated by the Commission as its agents, investigate and hear cases, and write decisions. Attorneys may also appear and represent the Commission in any court proceeding. Election specialists conduct on-site and mail ballot representation elections.

The administrative support staff docket all cases, type notices, decisions and court briefs, tabulate statistics, and process all internal and external records handled by the Commission, including personnel and purchasing records.

III. PUBLIC INFORMATION/COMMUNITY RELATIONS

The Commission understands that employees, unions and employers are better able to comply with the law when they understand their statutory rights and responsibilities. By providing information to the public and meeting with groups of employers and employees, the Commission attempts to reduce the numbers of charges filed. The Commission has authored A Guide to the Public Employee Collective Bargaining Law (now in its 2nd edition) which explains Commission procedures, summarizes decisions and includes the text of the law and the Commission's regulations. The Guide is published and sold by the University of Massachusetts Institute of Government Services and used extensively by the public.

A Commission staff member is assigned to "Officer of the Day" duty to aid the many people who call or walk into the Commission with labor-related problems. Although the Commission cannot always solve such problems, the "Officer of the Day" provides accurate information to assist the public. The Commission also answers questions from the press concerning the status of various cases before the Commission.

The Commission supplies information to three local professional publications to inform practitioners in the field of public sector labor relations. The Massachusetts Labor Relations Reporter publishes information concerning decisions, court cases, hearings, elections, complaints, and all other activities; Massachusetts Labor Cases prints all Commission decisions in full; and Massachusetts Lawyers Weekly prints summaries of Commission decisions. Commission decisions are also frequently reported in national publications, including Government Employee Relations Reporter, the Bureau of National Affairs Labor Relations Reference Manual, and the Commerce Clearing House Labor Cases.

Commission agents travel across the state in an effort to make the Commission's services more accessible. Most elections are conducted at the place of employment. The Commission also provides training to large groups of constituents in order to prevent prohibited practices.

LABOR RELATIONS COMMISSION
FISCAL YEAR 1994
SELECTED COMMISSION DECISIONS¹
JULY 1, 1993 - June 30, 1994

Commonwealth of Massachusetts, 20 MLC 1025 (1993) raised the issue whether the employer was obligated to bargain about the impact of the double-bunking of inmates on the safety and workload of correction officers. Because the double bunking proposal at issue would create one third more work for correction officers and increase safety concerns for officers entering and leaving rooms, the Commission found that the employer was obligated to bargain to resolution or impasse with the union representing the correction officers before implementing any double bunking plan. Because the record did not reveal that the double bunking plan was ever implemented, however, the Commission did not find that there was any impact that would have required bargaining.

In Town of Hopedale, 20 MLC 1059 (1993), the Commission considered whether the Assistant Assessor/Appraiser in the Town shared a sufficient community of interest with the Town clerical employees to be included in a bargaining unit of all full-time and regular part-time clerical and maintenance employees. The Commission found that, unlike office clericals, fifty percent of the Assistant Assessor/Appraiser's work involves property field appraisals. Further, the Commission concluded that the education and experience level of the Assistant Assessor/Appraiser was dissimilar to clerical employees because it required a working knowledge of the administration and interpretation of the Massachusetts assessment laws. Therefore, the Assistant Assessor/Appraiser did not share a community of interest with a bargaining unit of clerical and maintenance employees.

In Commonwealth of Massachusetts, 20 MLC 1087 (1993) (on appeal), the Commission considered the nature of a public employer's obligations to arbitrate grievances with a new exclusive collective

¹ This summary of decisions is not a comprehensive review of all Commission decisions that have issued during the past year. Rather it highlights certain noteworthy post-hearing decisions.

bargaining representative concerning grievances that arose under an agreement with the predecessor union. The Commission reasoned that, once the new union was certified as the exclusive bargaining representative, only the new union had the right to deal with the employer in collective bargaining matters, including matters pending in the grievance-arbitration process. The new union had the right to evaluate the merits of grievances filed by a predecessor union, and the employer had an obligation to deal only with the new union concerning the previously-filed grievances. Therefore, by failing to recognize the new union's status and to deal with it concerning the previously-filed grievances, the employer failed to bargain in good faith by failing to bargain only with the exclusive bargaining representative.

In a pair of rulings issued during the year, the Commission re-emphasized the importance of filing timely responsive pleadings with the Commission. City of Beverly, 20 MLC 1166 (1993); Commonwealth of Massachusetts, 20 MLC 1179 (1993). In each of those cases, the respondents had failed to file answers to the Commission's complaints or to default motions filed by the charging parties. Citing City of Worcester, 6 MLC 1475 (1979), the Commission observed that timely filed answers assist the parties and the Commission to focus the issues in dispute and facilitate settlement efforts. Although the Commission was careful to note that it will review requests for extensions of time to file answers and whether there is proper cause for not doing so, the respondent has the burden of justifying the exceptions to the requirement that answers be timely filed.

In Committee for Public Counsel Services, 20 MLC 1201 (1993), the Commission dismissed a representation petition by a union seeking to represent a bargaining unit of the non-legal staff of the Public Counsel Division of the Committee for Public Counsel Services. The central issue in the case was whether the petitioned-for employees were employed by a public employer within the meaning of Section 1 of G.L. c. 150E. Because the petitioning union had argued that the petitioned-for employees were not employed by the Chief Administrative Justice of the Trial Court, the only issue before the Commission was whether they were employed by the Commonwealth, acting through the Commissioner of Administration. Because G.L. c. 211D, the Committee's enabling statute,

did not reveal any authoritative relationship between employees of the Committee and the Commissioner of Administration and the union did not proffer any material evidence to demonstrate that the Commissioner of Administration controls the working conditions of the Committee's employees, the Commission declined to find that the petitioned-for employees were employed by the Commissioner of Administration.

The central issue before the Commission in Town of Halifax, 20 MLC 1320 (1993) (on appeal) was whether the Town was obligated to bargain about a decision to change a weekend shift complement that affected the fire fighters' method of responding to an alarm. The employer unilaterally reduced fire station staffing levels from two to one fire fighter on duty during the weekend day shift and required that the second fire fighter be on call to respond to fires and medical emergencies. Although the number of fire fighters manning a piece of apparatus did not change, the shift staffing change resulted in up to a six minute delay in the time that a piece of fire apparatus left the fire station to respond to an alarm.

Focusing on whether the Town's change in shift manning levels so affected safety and workload to require it to bargain about what would otherwise be viewed as a permissive subject of bargaining, the Commission found that the Town did not violate its bargaining obligation. The Commission found that the six minute delay relied on by the Union was not, by itself, sufficient to show that there was a compelling enough effect on safety and workload to overcome the Town's interest in determining shift manning levels.

In City of Malden, 20 MLC 1400 (1994), the Commission considered the extent of the City's obligation to bargain about the actions of the Malden Retirement Board. In 1990, the Malden Retirement Board had voted to change the prior existing practice of allowing employees to receive a lump sum payment in lieu of accrued unused vacation at retirement.

Consistent with the standard set out in City of Brockton, 19 MLC 1139 (1992), the Commission observed that the Malden Retirement Board is fiscally and administratively independent from the City of Malden. Because the City had no ability to control the decision of the Retirement Board, the Commission concluded that it had no duty to bargain about the decision of the Retirement Board. However, the

Commission did find that the City had an obligation to bargain about the impacts of the lost vacation and retirement benefits and that the City violated Section 10(a)(5) of the Law when it failed to do so.

In Boston School Committee, (March 2, 1994) (on appeal), the issue before the Commission was whether the School Committee had violated Sections 10(a)(1) and (3) of the Law by laying off provisional and temporary custodians in retaliation for their protected activity. The Union had filed a representation petition with the Commission on March 30, 1992 seeking to represent the previously-unrepresented custodians. The parties met in the Commission's offices on May 13, 1992 to explore a possible consent election agreement and the Commission scheduled an evidentiary hearing for July 3 because the parties were unable to reach agreement. On June 25, 1992, the School Committee notified the affected custodians that they would be laid off effective June 30, 1992. The School Committee's budget projections, which were prepared between February and July 1992 reflected that cuts would be made in the custodial budget.

The Commission found that the timing of the layoffs in relation to the protected activity demonstrated anti-union animus toward the custodians, which along with filing a representation petition with the Commission and the layoffs themselves, established a prima facie violation under Section 10(a)(3). The Commission then considered the School Committee's proffered reasons for the layoffs and concluded that the School Committee had failed to rebut the presumption of discrimination in the prima facie case. Although the Commission found the evidence established a declining budget for custodial operations, the Commission concluded that the School Committee had not demonstrated that the proffered economic reasons actually motivated the decision to lay off the custodians at issue.

In City of Boston, 20 MLC 1431 (1994), the Commission considered whether to sever emergency medical technicians (EMT's) from a recognized city-wide bargaining unit containing professional, non-professional, blue collar, and clerical employees. First, the Commission concluded that the EMT's had a separate and functionally distinct community of interest from the other employees in the broader city-wide

unit because they exercise specialized skills in basic and advanced life support services acquired and developed through a required course of study and maintained through a recertification process. Second, the Commission observed that bargaining history reflected that EMT's had emerged from the overall unit and taken on an identity with special interests and concerns that did not exist at the time the unit was recognized. Finally, the Commission noted that the City and the incumbent bargaining representative had addressed the EMT's special negotiating concerns in separate supplemental negotiations. Therefore, the Commission found that, because the EMT's were a uniquely-specialized, cohesive group of employees, their interest in separate representation outweighed the Commission's reluctance to disturb an established bargaining relationship; and the Commission directed an election among the EMT's in a separate unit.

In Board of Trustees/University of Massachusetts, 20 MLC 1453 (1994), the Commission considered whether teaching and research assistants at the University of Massachusetts at Lowell were public employees entitled to collective bargaining rights under G.L. c. 150E or whether they were casual employees who were not entitled to bargaining rights. Although a plurality of the Commission had determined in 1979 that teaching and research assistants at the Amherst and Boston campuses of the University of Massachusetts were not entitled to bargaining rights, Board of Trustees, 5 MLC 1986 (1979), here the Commission concluded that the petitioned-for unit of teaching and research assistants at the Lowell campus consisted of public employees and was an appropriate unit. The Commission reasoned that the assistants worked with sufficient regularity and had sufficient expectations of continued employment to be entitled to collective bargaining rights. Further, the Commission concluded that the petitioned-for unit was an appropriate unit, even though it included only the assistants at one campus of the University of Massachusetts. Finally, the Commission determined that there was no reason to believe that extending collective bargaining rights to the assistants would negatively impact the academic and policy concerns of the University.

Town of Brookline, 20 MLC 1570 (1994) raised the issue, *inter alia* whether the Town had violated the Law by increasing fire fighters

contributions for HMO premiums without bargaining to resolution or impasse. The facts before the Commission revealed that the Town had insisted on bargaining separately about the issue of the increased HMO contributions mid term. However, the Union refused to discuss the issue apart from the parties' successor contract negotiations. Deferring to the findings of an arbitrator, the Commission determined that the HMO premium rate was a term of the parties' agreement. It then concluded that the parties could not be at impasse on the issue of increased HMO premiums because the Town had improperly restricted negotiations by insisting that they bargain separately about health insurance premiums. Further, the Commission rejected the Town's argument that, because of its fiscal condition, the Town could not defer implementing the change until lengthy successor negotiations were complete. Therefore, the Commission held that the Town violated the Law when it implemented an increase in HMO premium contributions without bargaining with the Union to resolution or impasse in the context of successor negotiations.

The issue before the Commission in Town of Dedham, 21 MLC 1014 (1994) was whether an employer has an obligation to bargain with a union representing its employees before executing an MCAD Consent Order. The Commission concluded that, although an employer is not required to bargain over any aspects of its decision to enter into a Consent Order settling a matter before the MCAD, it is obligated to bargain with a union about the impacts of the Consent Order on terms and conditions of employment.

LABOR RELATIONS COMMISSION
LITIGATION REPORT
July 1993- June 1994

CASES BEFORE THE APPELLATE COURTS

Decisions Issued:

1. William Plouffe v. Labor Relations Commission, Appeals Court affirmed Labor Relations Commission's decision to dismiss, without a hearing, a duty of fair representation claim. December 1993.
2. City of Everett v. Labor Relations Commission, 416 Mass. 620 (1993). Supreme Judicial Court affirmed Labor Relations Commission's decision that the City had unlawfully increased employee health maintenance organization insurance contributions.
3. Massachusetts Corrections Officers Federated Union v. Labor Relations Commission, 417 Mass. 7 (1994). Supreme Judicial Court affirmed Labor Relations Commission's decision to dismiss a charge of prohibited practice, without a hearing, alleging that the Commonwealth had unilaterally reduced certain health insurance benefits. The SJC affirmed the Commission's conclusion that, because the Commonwealth had no control over the Group Insurance Commission (GIC), it was relieved of the obligation to bargain over the GIC's decision to alter health insurance coverage.
4. Massachusetts Organization of State Engineers and Scientists v. Labor Relations Commission, 35 Mass.App.Ct. 1109 (1994). Appeals Court affirmed Commission decision dismissing a charge of prohibited practice, upholding the Commission's finding that the Governor's act of filing certain legislation did not abrogate or repudiate the Union's collective bargaining agreement.
5. Plymouth Police Brotherhood v. Labor Relations Commission, 417 Mass. 436 (1994). Rejecting the Union's First Amendment arguments, the Supreme Judicial Court affirmed the Commission's decision to dismiss

a charge of prohibited practice without a hearing because the Union had not established probable cause to believe that a union officer had been disciplined for his protected activity rather than his insubordinate remarks.

6. Bertram Switzer v. Labor Relations Commission, 36 Mass.App.Ct. 565 (1994). Appeals Court affirmed Commission's pre-complaint dismissal of a duty of fair representation charge.

Pending Cases:

1. Bray v. Labor Relations Commission, A.C. No. 88-P-603, appeal of pre-complaint dismissal. Case stayed by appellant pending Commission disposition of new charges.

2. City of Lynn v. Labor Relations Commission, A.C. No. 93-P-810. Appeal from decision finding that involuntary retirement process implicates bargaining obligation and that the City unilaterally altered its involuntary retirement practice. Brief filed May 1994.

4. City of Chicopee v. Labor Relations Commission, A.C. No. 93-P-0832. Appeal from decision finding that certain positions, including the deputy collector, assistant city clerk, assistant assessor, and assistant treasurer, are employees within the meaning of G.L.c. 150E and that the City refused to bargain over their terms and conditions of employment. Brief filed January 1994, Argued June 1994.

5. Dunn v. Labor Relations Commission, A.C. No. 93-P-1782, appeal from pre-complaint dismissal of duty of fair representation charge. Brief filed March 1994.

6. Cannava v. Labor Relations Commission, A.C. No. 93-P-1433, appeal from pre-complaint dismissal of duty of fair representation charge. Brief filed June 1994.

7. National Association of Government Employees v. Labor Relations Commission, A.C. No. 94-P-354. Appeal from decision finding that NAGE had breached its duty of fair representation. Brief filed June 1994.

8. Edwards v. Labor Relations Commission, A.C. No. 94-P-432, appeal from pre-complaint dismissal of duty of fair representation charge. Commission Brief to be filed.

9. Pictrowski v. Labor Relations Commission, A.C. No. 94-P-621, appeal from pre-complaint dismissal of charge alleging various acts of retaliation because of protected activity.

Other cases appealed but not yet briefed include Commonwealth of Massachusetts v. Labor Relations Commission, an appeal of a final order in SUP-3462 and SUP-3508; E. Orwat v. Labor Relations Commission, appeal of pre-complaint dismissal in MUPL-3910; E. Orwat v. Labor Relations Commission, appeal of pre-complaint dismissal in MUP-9460; Town of Halifax v. Labor Relations Commission, appeal of a final decision in MUP-7823; E. Orwat v. Labor Relations Commission, pre-complaint dismissal in MUPL-3962; Commonwealth of Massachusetts v. Labor Relations Commission, appeal of a final decision in SUP-3829; B. Switzer v. Labor Relations Commission, appeal of pre-complaint dismissal in MUPL-3917; M. Jardin v. Labor Relations Commission, appeal of pre-complaint dismissal in UP-124; Boston School Committee v. Labor Relations Commission, appeal of final decision in MUP-9067; Suffolk County v. Labor Relations Commission, appeal of final decision in MUP-8820, Town of Falmouth v. Labor Relations Commission, appeal of final decision in MUP-8114.

CASES BEFORE SUPERIOR COURTS

Strike Related Litigation:

1. Labor Relations Commission v. Boston Teachers Union, Suffolk Superior Court C.A. No. 93-6117, Complaint for injunctive relief filed and initial Temporary Restraining Order granted.
2. Labor Relations Commission v. Beverly Teachers Association, Essex Superior Court C.A. No. 93-2599. Requested injunctive relief granted and contempt order issued.
3. Labor Relations Commission v. Brockton Education Association, Plymouth Superior Court, C.A. No. 93-1836. Injunctive relief granted, contempt order issued, final order and judgement entered.

Injunctions filed against Labor Relations Commission:

1. City of Malden v. Labor Relations Commission, Middlesex Superior Court, City of Malden's request for injunctive relief, seeking to halt Commission hearing in pending unfair labor practice charge involving insurance issues, denied.
2. Massachusetts Bay Transportation Authority v. Labor Relations Commission, Suffolk Superior Court, C.A. No. 94-1864. MBTA's request for injunctive relief, seeking to halt Commission hearing in a pending representation petition, denied.

COMMONWEALTH OF MASSACHUSETTS
LABOR RELATIONS COMMISSION
FISCAL YEAR 1994 ANNUAL REPORT

APPENDIX

EVOLUTION OF PUBLIC EMPLOYEE BARGAINING

- 1935 Wagner Act (National Labor Relations Act) gave collective bargaining rights to private sector employees in interstate commerce.
- 1937 Massachusetts passes Chapter 150A extending bargaining right to private sector employees within the Commonwealth; Labor Relations Commission established.
- 1958 All public employees (except police officers) granted the right to join unions and to "present proposals" to public employers. Chapter 149, Section 178D.
- 1960 Employees of city or town could bargain provided that the law was accepted by the city or town. There were no specific procedures for elections nor the manner and method of bargaining. Chapter 40, Section 4C.
- 1962 The Massachusetts Turnpike Authority, the Massachusetts Port Authority, the Massachusetts Parking Authority, and the Woods Hole, Martha's Vineyard and Nantucket Steamship Authority became subject to the representation and unfair labor practice provisions of Chapter 150A.
- 1964 State employees given the right to bargain with respect to working conditions (but not wages). Chapter 419, Section 178F. However, it was not until 1965 when the Director of Personnel and Standardization promulgated the rules governing recognition of employee organizations and collective bargaining negotiations that bargaining took place.
- 1964 Chapter 150A amended to include health care facilities as "employers" and nurses as "employees."
- 1965 Municipal employees given the right to bargain about wages, hours, and terms and conditions of employment Chapter 419, Sections 178G-N. This repealed Chapter 40, S.4C.

- 1968 Chapter 150A amended to expressly include private nonprofit institutions as "employers" and nonprofessional employees of a health care facility or of private nonprofit institutions (except members of religious orders) as "employees."
- 1969 Medonca Commission established by legislature to revise public employee bargaining laws.
- 1973 Most public employees - state and municipal - extended full bargaining rights under comprehensive new statute, Chapter 150E; binding arbitration of interest disputes involving police and fire employees.
- 1974 Chapter 150E amended to strengthen enforcement powers of Labor Relations Commission, modify union unfair labor practices, modify standards for exclusion of managerial employees.
- 1975 LRC issued standards for appropriate bargaining units affecting fifty-five thousand state employees in more than two-thousand job classifications. Ten statewide units were created--five non-professional and five professional. Statute passed providing for separate bargaining unit for state police. [Employees of the University of Massachusetts, and the state and community colleges also have separate units.]
- 1977 Chapter 150E extended to court employees in the judicial branch; two state-wide units (excepting Middlesex and Suffolk Counties' Superior Court officers) established for judicial branch employees.
- 1977 Housing authorities and their employees covered by the representation and prohibited practice sections of Chapter 150E. [Most other Authorities remain subject, to varying degrees, to Chapter 150A.]
- 1977 Joint Labor-Management Commission established to oversee collective bargaining negotiations and impasse involving municipal police officers and fire fighters.

- 1977 Agency service fee provisions are clarified to require that employee organizations provide a rebate procedure and to indicate which expenditures may be rebated to employees.
- 1980 "Proposition 2 1/2" enacted, repealing final and binding arbitration for police and firefighter contract negotiations.
- 1981 Chapter 150E amended to make decisions of the Labor Relations Commission reviewable in the Appeals Court.
- 1981 Labor Relations Commission empowered to refer to bargain cases to the Board of Conciliation and Arbitration of the Joint-Labor Management Committee for mediation.
- 1981 Section 11 of Chapter 150E amended to articulate the standard for issuing complaints in prohibited practice cases.
- 1981 The definition of "employer" or "public employer" in Section 1 of Chapter 150E was amended to specifically include all political subdivisions, with limited exceptions. In addition, the definition of "professional employee" in Section 1 of Chapter 150E was amended to specifically include a detective, member of a detective bureau or police officer who is primarily engaged in investigate work in any city or town police department with more than 400 employees.
- 1982 LRC issues comprehensive regulations setting forth agency service fee procedures, including requirements for unions to collect a fee pursuant to Section 12 of Chapter 150E and for employees to challenge the amount of validity of the fee.
- 1983 Chapter 150A amended to specifically cover private vendors who contract with the state or its political subdivisions to provide certain social and other services.
- 1984 The definition of "employer" or "public employer" in Section 1 of Chapter 150E was amended to include the newly created Massachusetts Water Resources Authority.

- 1986 Chapter 150E amended to forbid employers from unilaterally changing employees' wages, hours and working conditions until the collective bargaining process (including mediation, factfinding or arbitration, if applicable) has been completed.
- 1987 Arbitration reinstituted for police and firefighter contract negotiations, with arbitration awards subject to funding by the legislative body.
- 1990 LRC revises regulations to clarify procedures and increase efficiency.

TABLE 1 - TOTAL CASES RECEIVED, CLOSED FISCAL YEAR 1994

	TOTAL CASES	REPRESENTATION CASES	UNFAIR LABOR PRACTICE CASES	UNIT CLARIFICATION CASES	REQUEST FOR BINDING ARBITRATION	OTHER
Received Fiscal 1994	830	77	550	46	3	154
Closed Fiscal 1994	874	92	737	33	1	11

TABLE 2 - REPRESENTATION CASES: RECEIVED, CLOSED FISCAL YEAR 1994

	TOTAL	MCR	MCRE	SCR	SCRE	CR	CRE
Received Fiscal 1994	77	66	3	3	0	5	0
Closed Fiscal 1994	92	83	0	4	0	5	0

TABLE 3 - UNFAIR LABOR PRACTICE CASES: RECEIVED, CLOSED FISCAL YEAR 1994

	TOTAL	MUP	MUPL	SUP	SUPL	UP	UPL
Received Fiscal 1994	550	356	62	91	26	9	6
Closed Fiscal 1994	737	481	74	136	25	12	9

TABLE 4 - SIZE OF UNITS IN REPRESENTATION ELECTION CASES,
CLOSED, FISCAL YEAR 1994

TOTAL NUMBER OF ELECTION IN CASES CLOSED					TOTAL NUMBER OF VOTERS			
Size of Unit	Municipal		State		Private Sector		Total	Total of Voters
	Number of Elections	Total of Voters	Number of Elections	Total of Voters	Number of Elections	Total Voters		
Under 10	19	108					19	108
10-24	23	436					23	436
24-49	11	416	1	30	1	43	13	489
50-74	3	164					3	168
75-99	2	189					2	189
100-149	1	135					1	135
150-199			1	178	1	180	1	358
200-499								
over 500	1	622					1	662
TOTAL	60	2070	2	208	2	223	64	2501

**COMMONWEALTH OF MASSACHUSETTS
LABOR RELATIONS COMMISSION**

**FINANCIAL STATEMENT
FISCAL YEAR 1994**

General Appropriation Received	\$865,004
Salary Reserve Transfer	\$34,213
TOTAL APPROPRIATION AVAILABLE	\$899,217

EXPENDITURES:

Employee Salaries	\$804,859
Employee Training/Mileage Reimbursement	\$2,152
Contracted Student Interns	\$8,411
Unemployment, Medicare, Universal Health Insurance	\$9,265
Office & Administrative Expenses	\$32,483
Equipment Purchases	\$23,962
Equipment Leases & Maintenance Agreements	\$16,498
TOTAL EXPENDITURES	\$897,634

Planned Savings/Unemployment Rate Reduction	734
Reverted	848
TOTAL REVERTED	\$1,582

